
In the Matter of:

First Millennium Mortgage Corp.,

Petitioner

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HUDBCA No. 04-K-CH-EE023
Claim No. 7-207005070A

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Pro se

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For the Secretary

DECISION AND ORDER

Petitioner was notified by Due Process Notice that, pursuant to 31 U.S.C. §§ 3716 and 3720, that the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. The claimed debt is an amount that the Secretary claims is due under an indemnification agreement executed by Petitioner.

Petitioner has made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Administrative Judges of this Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. (24 C.F.R. § 17.152(c)). As a result of Petitioner’s request, the Board temporarily stayed referral of the debt for offset.

Summary of Facts

On September 30, 1999, Petitioner, a corporation doing business as a mortgagee, made a loan on real property, F.H.A. Case number 197-1410892 (“Garcia Loan”), that

was insured against nonpayment under Title II of the National Housing Act, 12 U.S.C. § 1707, *et seq.* (Secretary’s Statement, (“Secy. Stat.”) ¶ 2). The mortgagor defaulted on the Garcia loan on April 1, 2000. (Secy. Stat., Exh. A, Declaration of Glen Goodman, (“Goodman Decl.”) ¶ 4). HUD acquired the property financed under the defaulted Garcia loan on January 24, 2001. (Supplement to Secretary’s Statement, Exh. A, Supplemental Declaration of Glen Goodman, (“Supp. Goodman Decl.”) ¶ 4). On January 25, 2001, the Secretary paid the Part A insurance claim to Chase Manhattan Bank (“CMB”), which was the holder of the note at the time of default, and on February 21, 2001, the Secretary paid the Part B claim to CMB. (Supp. Goodman Decl., ¶ 5)

A review in early 2001 by HUD’s lender monitoring team determined that Petitioner had exposed HUD to “an unacceptable level of risk” and required Petitioner to execute an indemnification agreement. (Goodman Decl., ¶ 4). On February 6, 2001, Petitioner executed the indemnification agreement. (Goodman Decl., ¶ 4). Under the indemnification agreement, Petitioner agreed to indemnify HUD for four loans, which included the Garcia loan, “for losses which have been or may be incurred. . . .” (Goodman Decl., Exh. A, ¶ 1.). The indemnification agreement provided that where “a HUD/FHA insurance claim has been paid in full and the property has been sold by HUD to a third party, the amount of indemnification is HUD’s investment . . . minus the sales price of the property.” (Goodman Decl., Exh. A, ¶ 1. (c)). The agreement further provided that “HUD’s investment include[d], but [was] not limited to: the full amount of the insurance claim; any loss mitigation partial claims; all taxes and assessments; all maintenance and operating expenses, including costs of rehabilitation and preservation; and all sales expenses, where applicable.” (Goodman Decl., Exh. A, ¶ 1. (b)). The indemnification agreement provided, in the alternative, that if HUD did not sell the property to a third party, “conveyance of the property will be accepted by [Petitioner] and indemnification will be made to HUD for its investment.” (Goodman Decl., Exh. A, ¶ 1. (b)).

HUD sold the property financed by the defaulted Garcia loan on June 1, 2001 for \$140,777.00. (Goodman Decl., ¶¶ 4-5). HUD’s investment due to the default included: insurance settlements paid to CMB, \$145,876.06 (Part A) and \$3,650.34 (Part B); taxes, \$678.02, maintenance and operation expenses, \$6,734.97; and sales expenses, \$7,242.13. (Goodman Decl., ¶ 5). By letter dated June 23, 2003, HUD directed Petitioner to indemnify HUD in the amount of \$23,404.52, HUD’s investment minus the sales price of the property, within 30 days from receipt of that letter. (Goodman Decl., Exh. B). Petitioner is delinquent in paying HUD’s claim under the indemnification agreement and is indebted to HUD for the following amounts: \$23,404.52 as the unpaid principal balance as of March 31, 2004; \$361.27 as the unpaid interest on the principal balance at 2% per annum through March 31, 2004; and interest on the principal balance from April 1, 2004 at 2% per annum until paid. (Goodman Decl., ¶ 6).

Discussion

31 U.S.C. §3716 provides federal agencies with the remedy for collecting debts owed to the United States Government. The Secretary has filed a Statement and a Supplemental Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in a specific amount. Petitioner argues that it should have

been given an opportunity to cure the debt. Petitioner also contends that the amount of HUD's claim under the indemnification agreement should be reduced to reflect previous payments of mortgage insurance premiums in connection with the Garcia loan.

Petitioner contends that before the foreclosure proceedings, "First Millennium Mtg. was never advised or given the opportunity to sell, refinance, or otherwise make arrangements to cure such debt..." (Petitioner's Letter dated May 19, 2004 ("Pet. Ltr.")). Petitioner voluntarily entered into the indemnification agreement, which contained no provision that required HUD to give Petitioner any such opportunity to cure the debt. The indemnification agreement gave HUD the right to decide whether to sell the property to a third party or convey the property to Petitioner. See In the Matter of Indigo Mortgage Services, Inc., HUDBCA No. 95-C-132-MR4 (May 12, 1995)(WESTLAW)(where the Board found that the indemnification agreement did not obligate HUD to convey property that had not already been sold). Nothing in the indemnification agreement required that HUD convey the property to Petitioner. Id. HUD's sale of the property under the indemnification agreement was proper, and the Secretary's claim under the agreement is valid.

Additionally, Petitioner argues that payment of mortgage insurance "should cover some of the losses incurred..." (Pet. Ltr.). Petitioner has neither cited language in the indemnification agreement nor applicable law that would justify reducing Petitioner's debt by the amount of mortgage insurance payments. Nothing in Title II of the National Housing Act provides for the use of premiums for such a purpose. See 12 U.S.C. § 1707, *et seq.*

Order

Upon due consideration of the entire record of this proceeding, I find that the claim which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the Internal Revenue Service or to the U.S. Department of the Treasury for administrative offset is vacated. It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

H. Chuck Kullberg
Administrative Judge

September 22, 2004